



Specifically, this issue was raised in Mr. Qualls' direct appeal to the Supreme Judicial Court, and again on Petition for Rehearing. *Id.* at 823.

Moreover, even though *Crawford* had not been decided at the time of Mr. Qualls' appeal, there is no question the issue was preserved for federal habeas review because he "sufficiently alerted the state courts to the substance of the constitutional claim." *Scarpa v. DuBois*, 38 F.3d 1, 7 (1<sup>st</sup> Cir. 1994). Though specific citation to *Commonwealth v. Crawford* was absent from Mr. Qualls' state court appeals, its omission is not fatal since the confrontation claim was sufficiently covered in the state courts. Moreover, though recommended, there is no "bright line rule" that such cases be specifically cited. *See Nadworny v. Fair*, 872 F.2d 1093, 1101 & n.4 (1<sup>st</sup> Cir. 1989). "The guidelines . . . promulgated in respect to exhaustion are intended to be instructive, rather than to comprise the sole corridors through which the 'actual embodiment of fair presentment' may pass." *Scarpa v. DuBois*, 38 F.3d at 8. The argument was fairly presented to the state courts: Mr. Qualls' conviction was affirmed on appeal and his petition for rehearing to the Supreme Judicial Court was denied. The state courts had a full and fair opportunity to resolve Mr. Qualls' sixth amendment constitutional claim before they were presented to the federal courts, thus, the claim was successfully exhausted. *See O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999).

Because Mr. Qualls' *Crawford* argument was raised, in substance, below, this Court may proceed on his claim regarding the retroactivity of the *Crawford* case. The objection lodged against the statement admitted was based on hearsay statements and the teachings of *Crawford* should apply.<sup>1</sup>

Respectfully submitted,  
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By and through his Attorneys:

/S/ Brad Bailey

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<sup>1</sup> Mr. Qualls' argument in reference to applying *Crawford* retroactively is fully set forth in his memorandum submitted with his habeas petition.